



# THE ATTORNEY GENERAL OF TEXAS

GROVER SELLERS

AUSTIN 11, TEXAS

Honorable S. C. Smith  
County Attorney  
Bosque County  
Meridian, Texas

Dear Sir:

Opinion No. O-5902  
Re: Authority of Commissioners'  
Court of Bosque County to design-  
ate a deputy to act for and draw  
salary of county superintendent  
inducted into the armed services.

Your recent communication to this office reads as follows:

"One of our county officials, a young man who was elected at the last election to serve a four-year term in said office, is about to be inducted into the armed services, having served a little more than a year of his term.

"Our County Judge has asked me to get a ruling from your Department as to whether or not the Commissioners' Court of our county could designate his deputy to act in his place in his absence and draw all salary and other compensation of the office, so that in the event of his discharge before his term of office expires, he could again assume the duties of the office.

"I have advised the County Judge that in my opinion this cannot be done, but he is anxious for a ruling from your Department on this matter and I would appreciate a ruling from you on this matter, and would be very glad to know that my opinion in this matter is incorrect."

It is the opinion of this department that you have advised your County Judge correctly.

Article 2689, Revised Civil Statutes, provides for the oath and bond to be taken and given by an elective County Superintendent. Article 2693, Revised Civil Statutes, prescribes his general duties. Additional specific duties are imposed upon said official by various other statutes.

We have been unable to find any authority, constitutional or statutory, whereby your county commissioners' court is empowered to designate any person to act in the absence of the County Superintendent, or draw his salary and other compensation of office so long as no vacancy exists in said office.

The commissioners' court is empowered, by a majority vote of the members of the court, present and voting, to fill a vacancy in the office of County Superintendent of Public Instruction. Article 2355, Vernon's Annotated Civil Statutes. No such authority exists, however, unless a vacancy occurs, and no such situation is presented in your communication.

Article 2700, Vernon's Annotated Civil Statutes, as amended by the 48th Legislature, provides that "the County Superintendent, with the approval and confirmation of the County Board of Education, may employ a competent assistant to the County Superintendent. . . and may employ such other assistants as necessary . . ." No provision is made for a deputy county superintendent and no provision is made covering the duties of such authorized assistants, except that they are required at all times to work under the supervision and direction of the County Superintendent of Public Instruction.

We have found no statute authorizing the appointment of a substitute county superintendent. The County Superintendent of Public Instruction is the only officer who can perform the duties of said office. Therefore, so long as no vacancy exists in said office, the Commissioners' Court of your county is without authority to designate anyone else to perform such duties. In this connection, see the case of Marquart v. Harris County, 117 S.W. (2d) 494.

Similar conclusions as herein expressed were set forth in this department's opinion No. O-3344, approved March 29, 1941.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ L. H. Flewellen

L. H. Flewellen  
Assistant

LHF:EP:egw

APPROVED APRIL 5, 1944  
/s/ Geo. P. Blackburn  
(Acting)  
ATTORNEY GENERAL OF TEXAS

Approved  
Opinion Committee  
By B W B  
Chairman